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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/597,891

04/18/2008

Salvador Mateu Climent

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EGBERT LAW OFFICES  
412 MAIN STREET, 7TH FLOOR  
HOUSTON, TX 77002

EXAMINER

TRIGGS, ANDREW J

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

08/15/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/597,891	<b>Applicant(s)</b> MATEU CLIMENT, SALVADOR	
	<b>Examiner</b> ANDREW TRIGGS	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 4 and 5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The Examiner acknowledges the cancellation of Claims 1-3 and the addition of Claims 4 and 5.

#### ***Information Disclosure Statement***

2. The information disclosure statement filed 02 June 2008 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent # 4,384,566 to Smith in view of US Patent # 4,018,381 to Bisegna.

Regarding claim 4, Smith teaches, in Figure 1, a device having an outside [the side facing away] façade sheet of fire-resistant material (56) (Column 3, Lines 19-20) and an inside [the side facing in] façade sheet of fire-resistant material (56) (Column 3, Lines 19-20). The outside façade sheet is spaced from the inside sheet to define an air chamber (52) extending vertically between the facade sheets (56). Figure 7 shows a first horizontal layer (108) extending below the

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façade sheets (50), part of the first horizontal layer is formed from angle iron (106). The Examiner takes Official Notice that it would have been obvious to use wrought iron for the angle iron because wrought iron is known for being easy to weld and Smith teaches items (102) and (106) are welded together (Column 5, Lines 31-52). A conduit in the form of a chimney (20) communicates with the air chamber (52). Figure 2 shows the outside façade sheet has an air channel (42) having an opening at the outer side of the outside façade sheet and an opposite end having an opening to the air chamber (52). Smith does not teach a second horizontal layer or its positioning. However, Bisegna teaches, in Figure 1, a furnace (3) located between a first horizontal layer [the slab foundation] and a second horizontal layer [the floor of the house] above the first horizontal layer with a chimney (2) extending through the second horizontal layer. It would have been obvious that the fireplace of Smith could be positioned within a house like the furnace of Bisegna so that the air chamber and conduit extend through the second horizontal layer since a fireplace is inherently can be placed within a building and the air chamber and conduit exhaust the smoke from the fire to the outside through the second horizontal layer. Inherently, combustible materials would be placed in the fireplace which is in a space between the first and second horizontal layers and the smoke would rise up through an opening in the second layer through which the air chamber and conduit extend. Thus Smith in view of Bisegna teach a combination for rapid consumption of a combustible load located within the reach of a fire to remove smoke and hot gasses produced by the fire.

Regarding claim 5, Smith in view of Bisegna teach an assembly with a location for a combustible material but they do not teach the combustible material is ignitable at a temperature of between 100 and 150 degrees Celsius. However, the Examiner takes Official Notice that it would have been obvious to ignite a combustible material in the range of 100 and 150 degrees Celsius depending on the material used and a possible source of ignition such as a spark, or a flame and the heat produced by a pre-existing combustion occurring in the fire place.

### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot because of the cancellation of Claims 1-3, the addition of Claims 4 and 5 and the new rejection of Smith in view of Bisegna which was necessitated by the amendment. Note: The Applicant argues Smith does not teach the combination requiring first and second horizontal layers. However, the rejection of Smith in view of Bisegna now teach these limitations.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREW TRIGGS whose telephone number is (571)270-3657. The examiner can normally be reached on Monday through Thursday 6:30am - 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William V Gilbert/  
Examiner, Art Unit 3635

/EILEEN D LILLIS/  
Supervisory Patent Examiner,  
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/Andrew J Triggs/  
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